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18 HOME DEPOT U.S.A., INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 B&O MANUFACTURING, INC.,

23 Plaintiff,

24 v.

25 HOME DEPOT U.S.A., INC.,

26 Defendant.

CASE NO. C07 02864 JSW

DECLARATION OF DAVID CURLEY

27 Pursuant to 28 U.S.C. § 1746, I, David Curley, hereby declare as follows:

28 1.

This Declaration is based on my own personal knowledge. I am over the age of 18 years
and am competent to testify regarding those things about which I have personal knowledge.

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DECLARATION OF DAVID CURLEY

2.

From September 6, 2005 to May 15, 2007, I was a Senior Manager for Capital Procurement for Home Depot U.S.A., Inc. ("Home Depot"). In that role, I negotiated purchase agreements between Home Depot and vendors who supplied products to Home Depot. I am currently a Product Development Merchant for Home Depot.

3.

Home Depot's corporate headquarters and principal place of business are located in Atlanta, Georgia. I am based at Home Depot's headquarters in Atlanta and am a resident of Dallas, Georgia.

4.

Home Depot has been purchasing safety netting from B&O Manufacturing, Inc. ("B&O") for well over ten years. During the course of the business relationship between Home Depot and B&O, representatives from B&O have visited Home Depot's Atlanta, Georgia headquarters on numerous occasions.

5.

In April 2005, Home Depot and B&O entered into a Memorandum of Understanding ("MOU") under which Home Depot agreed to purchase a percentage of its new store safety netting from B&O through March 31, 2006. Shortly after executing the MOU, Home Depot pre-paid B&O over \$5 million for the split curtain safety netting systems that Home Depot committed to purchase under the MOU. Of the over \$5 million, however, B&O was unable to deliver roughly \$2 million of products for which Home Depot prepaid.

6.

On January 31, 2006, Michael Calleja, the President of B&O, traveled to Atlanta, Georgia to discuss an arrangement under which B&O would refund Home Depot's unsatisfied payments. The result of this meeting is the parties' Refund Agreement. I was primarily responsible for negotiating the terms of the Refund Agreement with Mr. Calleja. Mr. Calleja drafted the Refund Agreement on B&O's letterhead and signed it at Home Depot's Atlanta, Georgia headquarters on January 31, 2006. Thomas Single, then Vice President of Procurement for Home Depot, signed the Refund Agreement on Home Depot's behalf on February 1, 2006.

7.

Home Depot's Legal Department reviewed and approved the Refund Agreement. All of Home Depot's Legal Department employees who can testify regarding the approval of the Refund Agreement are residents of Georgia and are based at Home Depot's Atlanta, Georgia headquarters.

8.

I understand that in its lawsuit, B&O claims that Home Depot has failed to satisfy the volume purchasing requirements under the MOU and the June 2006 Expense Buying Agreement. Home Depot's purchasing records will be highly relevant to B&O's claims because only these records can demonstrate the percentage of new store safety netting Home Depot has purchased from B&O. B&O's records will not be able to demonstrate whether Home Depot has met the volume purchasing requirements because Home Depot's compliance with those requirements depends in part on the quantity of safety netting Home Depot has purchased from vendors other than B&O. All of Home Depot's purchasing records are located in Home Depot's headquarters in

1 Atlanta, Georgia. Similarly, Home Depot's accounting, procurement, and/or other corporate
2 personnel who can testify to Home Depot's purchasing records and history are located in Atlanta.

3 Under penalty of perjury, I declare that the foregoing is correct and true.
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5 This ____ day of August, 2007.
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7 _____
8 David Curley
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